IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3028 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SITARAM NAGAJI PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3028 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS AC RAVAL, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 11-02-2004, by which the petitioner is detained under PASA. Along with the said order, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference of solitary criminal case registered as Gunah Register No.18/2004 with Dehgam Police Station against the petitioner under the Bombay Prohibition Act. After considering the aforesaid case and after considering the statements of certain witnesses, the detaining authority has passed the order of detention, which is impugned in this petition.

2) The learned advocate for the petitioner has submitted that the petitioner was already in judicial custody at the time of passing detention order and the authority has not recorded its subjective satisfaction as to on what basis it has come to the conclusion that the petitioner is likely to be released on bail and continue his activity. To substantiate his say, the learned advocate for the petitioner has relied upon an unreported judgement of this Court delivered in Special Civil Application No.8881/2001 dated 17-01-2001, wherein this Court has observed in para 5 as under :

> "There is no dispute about the factual aspects. In two offences registered against the petitioner-detenu, he was bailed out by a Court of competent jurisdiction. So far as the third offence is concerned, the grounds of detention itself indicate that the detenu was not arrested in connection with that offence, but anticipating an application for bail and grant of bail, and on being released on bail, he may continue his anti-social activities, the detaining authority deemed it necessary to detain the petition. In this regard, decision of the Apex Court in the case of Amritlal v. Union Government, AIR 2000 SC 3674 may be profitably referred to. It was observed that the satisfaction of the authority based on likelihood of detenu moving an application for bail is not sufficient. That likelihood of detenu moving an application for bail is different from likelihood to be released on bail and, therefore, the order of detention was quashed. This judgement would be squarely applicable to the facts of the present case. In the instant case, there is no material to show that the subjective satisfaction recorded by the detaining authority that, on his arrest and on his producing before the Magistrate, he may be taken in judicial custody and he may apply for

bail and that he may obtain bail and, thereafter, may continue his activities. Therefore, the subjective satisfaction recorded by the detaining authority for immediate need for detaining the detenu is without any basis. Hence, this petition deserves to be allowed."

3) Mr.Prajapati, learned advocate for the petitioner submitted that there is only solitary case registered against the petitioner and considering the same, it cannot be said that the petitioner is a habitual offender. It is further submitted that considering the said case, it cannot be said that the petitioner has violated public order and at the most it can be said that law and order is violated by the petitioner. To substantiate his say, Mr.Prajapati has relied upon the judgement of this Court in Sandip Omprakash Gupta Vs. State of Gujarat and others, reported in 2004 (1) GLR 864. In the aforesaid case, there was a solitary offence under the Bombay Prohibition Act was registered against the detenu and the authority has relied on two other unregistered offences based on statements of certain witnesses and, therefore, a learned Single Judge of this Court held, on facts, that the detenu could have been dealt with under the ordinary criminal law. The order of detention passed therein, treating the petitioner as a bootlegger, is set aside. Since I am bound by the view taken by the learned Single Judge, in view of the aforesaid ground about solitary incident of a registered case under the Bombay Prohibition Act against the petitioner, which can be taken care under the criminal law, this petition is required to be allowed.

4) Considering the fact that there is only solitary case registered against the petitioner and considering the fact that the detaining authority has not recorded its subjective satisfaction properly while stating that the petitioner will be released on bail on presenting bail application, point involved in this matter is covered by the aforesaid judgements of this Court. On this ground, this petition is required to be allowed and it is allowed.

5) At this stage, learned advocate for the petitioner made a voluntary statement that in order to see that the petitioner is not tempted to repeat the said offence, the petitioner will not enter Dehgam Police Station area upto 31st October, 2004. This statement is recorded and it is for the police authority to monitor whether the petitioner is entering Dehgam Police Station area or not.

6) In view of what is stated above, this petition is allowed. The order of detention dated 11-02-2004 is quashed and set aside. The detenu, Sitaram Nagajibhai Prajapati is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)

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